

**IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA**

FAO (Ord.) No. 431 of 2006.

Date of decision: 01.11.2007.

Rameshwar Dass

...Appellant

Versus

Manohar Lal

...Respondent

Coram

The Hon'ble Mr. Justice Dev Darshan Sud, J.

Whether approved for reporting ?¹

**For the Appellant: Mr. R. K. Bawa, Senior Advocate with
Mr. Inderjit Singh, Advocate.**

**For the Respondents: Mr. Bhupender Gupta, Senior Advocate
With Mr. Neeraj Gupta, Advocate.**

Dev Darshan Sud, J.

The defendant has preferred this appeal against the judgment and decree of the learned Additional District Judge (Presiding Officer, Fast Track Court), Solan, in an appeal preferred by him against the judgment and decree of the learned trial Court. The judgment in appeal disposes of both the appeals preferred by the defendant and the appellant who were aggrieved by the order of the learned trial Court.

¹ *Whether the reporters of Local Papers may be allowed to see the judgement?*

The suit filed by the plaintiff was partly decreed and the defendant-appellant was restrained by way of permanent prohibitory injunction from throwing debris etc. on the suit land. The plaintiff was aggrieved by the fact that only part of the relief has been granted to him and the defendant-appellant against that part which granted a decree of injunction against him.

The learned appellate Court, on a consideration of the entire matter, held that the plaintiff Manohar Lal had filed an application before the trial Court with permission to prove a Tatima (spot map) in order to establish identity of the suit land. The Court noticed that an order was passed on 24.7.2004 by the learned trial Court by which this application was kept pending and was to be decided alongwith the main appeal. Considering this fact, the learned appellate Court remanded the matter to the trial Court for determination afresh after setting aside the judgment and decree.

It is now trite that a whole sale remand should be avoided.

In ***Bechan Pandey and others vs. Dulhin Janki Devi and others, A.I.R. 1976 Supreme Court 866***, it has been observed:

"9. To remand the suit to the trial Court would necessarily have the effect of keeping alive the strife between the parties and

*prolonging this long drawn litigation by another round of legal battle in the trial Court and thereafter in appeal. It is time, in our opinion, that we draw the final curtain and put an end to this long meandering course of litigation between the parties. If the passage of time and the laws of nature bring to an end the lives of men and women, it would perhaps be the demand of reason and dictate of prudence not to keep alive after so many years the strife and conflict started by the dead. To do so would in effect be defying the laws of nature and offering a futile resistance to the revage of time. If human life has a short span, it would be irrational to entertain a taller claim for disputes and conflicts which are a manifestation of human frailty. The Courts should be loath to entertain a plea in a case like the present which would have the effect of condemning succeeding generation of families to spend major part of their lives in protracted litigation. It may be appropriate in the above context to reproduce what was said in the case of **Sant Narain Mathur v. Rama Krishna Mission, AIR 1974 SC 2241:***

"it is time, in our opinion, that we draw the final curtain on this long drawn litigation and not allow its embers to smoulder for a further length of time, more so when the principal contestants

have all departed bowing as it were to the inexorable law of nature. One is tempted in this context to refer to the observations of Chief Justice Crewe in a case concerning peerage claim made after the death without issue of the Earl of Oxford. Said the learned Chief Justice:

"Time hath its revolutions; there must be a period and an end to all temporal things - an end of names, and dignities and whatsoever is terrene, and why not of De Vere? For where is Bohun? Where is Mowbray? Where is Mortimer? Why, which is more and most of all, where is Plantagenet? They are all entombed in the urns and sepulchers of mortality. ' What was said about the inevitable end of all mortal beings, however eminent they may be, is equally true of the affairs of mortal beings, their disputes and conflicts, their ventures in the field of love and sport, their achievements and failures for essentially they all have a stamp of mortality on them."

One feels tempted to add that if life like a dome of many coloured glass stains the white radiance of eternity,

so do the doings and conflicts of mortal beings till death tramples them down."

The proper course for the learned appellate Court should have been to call for a finding on the point urged by the plaintiff in the application which remains undecided and not to resort to a whole sale remand. A litigation, cannot be kept pending ad-infinitum. In the facts and circumstances of the case, the judgment and decree of the appellate Court is set aside and the following directions are issued:-

- (1) Both the parties to the appeal shall appear before the learned appellate Court on **29.11.2007**.
- (2) The learned trial Court will determine the application filed by Manohar Lal plaintiff for proving the Tatima as prayed for. Needless to add such application shall be dealt with and decided in accordance with law.
- (3) The learned appellate Court shall fix a date on which both the parties shall be present before the trial Court and the record of the case shall also be sent to that Court.
- (4) A direction is issued to the learned trial Court to dispose of the point for determination referred on or before **31st March**,

2008, where after such finding will be sent to the appellate Court which shall proceed to determine the matter by considering the finding rendered by the trial Court.

This appeal is accordingly allowed. There shall be no order as to costs.

CMP No.1371 of 2006.

In view of the order passed in the main appeal, this application is disposed of. Interim order dated 1.3.2007 is vacated.

November 1, 2007.
(aks)

(Dev Darshan Sud)
Judge.